American Bankers Association
Building Success. Together.

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Re: First Published Request for Comments Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996; **Docket ID**: FFIEC- 2014-0001 (June 04, 2014)

Dear Sir or Madam:

The American Bankers Association[1] appreciates the opportunity to provide comments on regulatory burden through the review found in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). In the first decennial EGRPRA review, ABA provided a lengthy list of highly detailed recommendations for regulatory relief. Very few were acted upon by the federal banking agencies (Agencies). We fear that in the focus on the many specifics policymakers may have lost sight of the big picture principles involved, and how—even ten years ago—bank services to customers were being smothered under a mountain of red tape and bureaucratic prescription. With the current exercise we are choosing to focus more on the big picture, the key themes of removing unnecessary burdens, a goal that we understand is shared by regulator and regulated alike.

The specific examples that we offer—while very real and in need of being addressed—also serve as illustrations of the broader problem. For each instance we cite, there are many more that could be provided.

[1] The American Bankers Association is the voice of the nation's $15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans. ABA believes that government policies should recognize the industry's diversity. Laws and regulations should be tailored to correspond to a bank's charter, business model, geography and risk profile. This policymaking approach avoids the negative economic consequences of burdensome, unsuitable and inefficient bank regulation. Through a broad array of information, training, staff expertise and resources, ABA supports banks as they perform their critical role as drivers of America's economic growth and job creation.

We encourage the Agencies to take these examples and use them to root out the much larger body of rules and requirements that today are more harmful than helpful, that hinder rather than facilitate the ability of banks to serve their customers. In the end, the test of any banking regulation must be, does it enhance the sustainable provision of services to American banking customers? Where it does not, the regulation must be changed or discarded.

As required by EGRPRA, the federal banking agencies (Agencies) must review all of their regulations at least every ten years to identify outdated or unnecessary regulatory requirements imposed on insured depository institutions. During this review the Agencies must provide notice and solicit public comment on categories of regulations under scrutiny, then conclude the review by authoring a report to Congress. This report must summarize the major regulatory burden issues raised, the merits of those issues, and whether those issues are best addressed by regulation or legislative action.

I. ABA Supports EGRPRA's Regulatory Burden Focus

ABA supports the intent of this law and strongly encourages the Agencies to use this second decennial EGRPRA review to find ways to provide meaningful regulatory relief to banks and Federal savings associations (also referred to here as thrifts). We believe that doing so will facilitate the ability of banks to provide services to our customers.

It is unfortunate that the EGRPRA review process does not encompass several important sources of regulatory burden. For instance, the Agencies have announced that rules transferred to the Bureau of Consumer Financial Protection and the Financial Crimes Enforcement Network are not subject to this EGRPRA review. Nor are rules that will go into effect during the period of the EGRPRA review, rules that have recently gone into effect, or rules that are not yet fully implemented.[2]

Further, the categories covered in this first published request contain many of the rules under review by a separate proposed rulemaking of the Office of the Comptroller of the Currency (OCC) to integrate the licensing rules for national banks and thrifts.[3] ABA is also commenting on the OCC's licensing rule integration proposal[4] and has noted areas where that proposal may actually increase regulatory burden. Additionally, ABA has extensive comments on 12 C.F.R. Part 9 and has concurrently filed a separate letter with the OCC on that topic.

ABA's comments on EGRPRA generally reflect the Agencies' announced limits to this statutory regulatory burden relief exercise.

II. Regulatory Burden Adversely Impacts All Banks —and Bank Customers

The need for regulatory relief has never been greater. In the four years since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), banks have faced more than eight thousand pages of related final rules and guidance, and the rule-writing

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[2] [2] Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 79 Fed. Reg. 32,172, 32,173-74 (proposed June 04, 2014).

[3] Integration of National Bank and Federal Savings Association Regulations: Licensing Rules; Proposed Rule, 79 Fed. Reg. 33,260 (proposed June 10, 2014).

[4] See ABA's Comment Letter on the Integration of National Bank and Federal Savings Association Regulations: Licensing Rules; Proposed Rule (dated September 02, 2014).

mandated by the Act is only half completed.[5] Banks of all sizes face considerable costs in complying with these new requirements, costs that also affect bank customers in terms of higher costs and reduced availability of financial services. These new regulations have been layered upon the numerous requirements already in existence. For the six largest U.S. banks—where the impact is more readily quantifiable—regulation costs were estimated at over $70 billion at the end of 2013, up from $35.5 billion in 2007.[6]

For smaller institutions, new regulation costs and their accompanying new compliance personnel costs are more difficult to calculate and to aggregate, but they are sizable and we believe, in many aspects, even greater in degree. In all cases they impose significant direct expense and opportunity costs. As former Federal Reserve Board Governor Elizabeth Duke noted, hiring one additional employee would reduce the return on assets by 23 basis points for banks with total assets of $50 million or less. This reduced return on assets could cause about 13 percent of the banks of that size to go from profitable to unprofitable.[7] While regulatory burden adversely affects all members of ABA, we are encouraged that the Agencies share our concern about the impact of regulatory burden on community banks.[8] This concern is justified, as we have witnessed the disappearance of over 1,500 community banks in this last decade, a process that, since the onset of the recession, amounts to the loss of one U.S. bank every business day.[9] Our nation and its bank customers are not better off for that attrition.

We offer the following very real examples of the larger body of regulatory burdens that can and should be addressed to the benefit of our national bank supervision program and the interests of banking customers.

A. The Small Bank Holding Company Policy Statement; Parity for SHLCs

When adopted by the Federal Reserve Board of Governors (FRB or Federal Reserve) in 1980, the Small Bank Holding Company Policy Statement (Policy Statement) allowed bank holding companies with under $150 million in assets to hold higher levels of debt than otherwise permitted to facilitate the transfer of ownership of small community banks. In February 2006, the FRB raised this asset threshold from $150 million to $500 million, a move ABA applauded.

As the FRB recognized at the time, two decades of inflation, industry consolidation, and normal asset growth had caused this threshold to lose much of its relevance.[10] Major industry and regulatory changes since 2006 have again created the need to reconsider and update this asset threshold. ABA believes this asset threshold should be raised to at least $1 billion, consistent with recently proposed bipartisan legislation in the Senate.[11]

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[5] ABA Dodd-Frank Tracker. (as of July 24, 2014). Available at: http://regreformtracker.aba.com/

[6] Saabira Chaudhuri, "The Cost of New Banking Regulation: $70.2 Billion," The Wall Street Journal., July 30, 2014.

[7] See ABA's, An Avalanche of Regulation, available at: http://www.aba.com/Issues/Index/Documents/2014RegBurdenInfographic.pdf

[8] Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 79 Fed. Reg. 32,172, 32,173 (proposed June 04, 2014).

[9] Examining Regulatory Relief Proposals for Community Financial Institutions, Part II. Before the Comm. On Financial Servs., 113 Cong. (2014) (statement of R. Daniel Blanton, Chief Executive Officer, Georgia Bank & Trust, on behalf of the American Bankers Association).

[10] Small Bank Holding Company Policy Statement; Definition of a Qualifying Small Bank Holding Company, 70 Fed. Reg. 53,320, 53,321 (Sept. 8, 2005) (Codified at 12 U.S.C. § 225 (Appendix C)).

[11] S. 2696. 113th Cong. § 101 (2014).

Changes found in the Dodd-Frank Act have also expanded the regulatory responsibilities of the Federal Reserve. For instance, all regulatory and rulemaking responsibility for Savings and Loan Holding Companies (SLHC's), that was formerly a function of the Office of Thrift Supervision, was transferred to the Federal Reserve as of July 21, 2011. However, over three years after this transfer, the FRB's Policy Statement has not kept pace, and the treatment afforded to BHC's under the Policy Statement has not been extended to SLHC's. In the interest of affording similarly structured institutions equivalent regulatory treatment, the FRB should address this disparity by providing SLHC's the same treatment BHC's receive from the Policy Statement. Addressing this disparity is also consistent with the proposed legislation referenced above.[12]

B. Control Determinations under the Bank Holding Company Act

What constitutes "control" for purposes of the Bank Holding Company Act holds significance in both the bank and non-bank context. The FRB communicates its position on what constitutes "control" through regulations, policy statements, staff interpretations, and orders approving or denying applications. The variety of guidance together with the variety of facts and circumstances to which it has been applied has led to some uncertainty as to what constitutes control in different situations. The FRB could relieve the burden for financial institutions and the FRB in evaluating acquisitions were the definition of "control" clarified and the basis for such determinations were cumulatively catalogued in one place.

C. Branching Requirements for National Banks and Federal Savings Associations

Current regulations require national banks to submit an application and obtain prior OCC approval to establish or relocate a branch.[13] Thrifts have less burdensome requirements, permitting the establishment of new branches without OCC approval, provided that certain criteria are met.[14] This less burdensome approach for thrifts was enacted in 2005, in response to the last decennial EGRPRA review.[15] As stated in a recently filed letter, ABA is concerned that in its most recent licensing integration proposal, the OCC may be considering an approach that would reverse course on this flexible branching treatment afforded to thrifts.[16]

The OCC has stated that it is proposing to retain the differences in branching regimes for national banks and thrifts. However, as part of its integration proposal, it has included a detailed "alternative proposal" that would subject thrifts to the national bank requirements found in § 5.30, requiring thrifts to submit an application and obtain prior OCC approval before establishing or relocating a branch.[17] This requirement would place further regulatory burden on thrifts by forcing them to adapt to what the integration proposal describes as the "extensive case law and regulatory history that also may apply to Federal savings associations" in connection with the meaning of "branch." Instead, ABA believes the OCC should integrate the branching regimes of national banks and thrifts by extending the flexible branching treatment enacted as part of the last EGRPRA review to national

[12] Id.
[13] 12 C.F.R. § 5.30 (2014).
[14] 12 C.F.R. § 145.93 (2014).
[15] 70 Fed. Reg. 51,582, 51,583 (Aug. 31, 2005) (codified at 12 C.F.R. pt. 145).
[16] See ABA's Comment Letter on the Integration of National Bank and Federal Savings Association Regulations: Licensing Rules; Proposed Rule (dated September 02, 2014).
[17] Integration of National Bank and Federal Savings Association Regulations: Licensing Rules; Proposed Rule, 79 Fed. Reg. 33,260, 33,281 (June 10, 2014).

banks. This change would allow both national banks and thrifts to establish new branches without OCC approval, provided that the conditions are met that currently are applied in the case of thrift branches.

D. Call Report

Banks submit the Consolidated Reports of Condition and Income (Call Report) each quarter for the Agencies' use in monitoring their condition, performance, and risk profile, as well as to assess the industry as a whole and price deposit insurance, among other things. Call Report data is also widely used by policymakers, academics, bank counterparties, and other stakeholders. With more than 1,900 line items, however, it is time for the Agencies to weigh the benefits of these varied items of Call Report data against the considerable collection and creation costs these items impose. ABA and its members understand the basic importance of the Call Report, but it is impossible to ascribe that value to every item in the reports. Call Reports have become complicated and extensive forms, which require collection of information from virtually every area of the bank regardless of the utility of the information. We urge the Agencies to remove obsolete or low value items from the Call Report and be reluctant to make additions unless they serve important supervisory purposes that cannot be otherwise met at lower cost.

Additionally, we urge the Agencies to work together to take a holistic view of all the reports banks are required to submit. In addition to the Call Report, banks are subject to a myriad of other reporting requirements, many of which ask for the same general information, often in varying formats. In many cases, however, the data definitions are slightly different so that banks are unable to leverage the same reporting mechanisms for different reports. In order to alleviate these inconsistencies, we encourage the Agencies to reconcile differing instructions and definitions for the reporting of essentially equivalent information.

We note a few examples of areas that need to be reconciled with other existing reports, rules, and industry practices:

1. The threshold for loans to small businesses in Schedule RC-C, Part II should be reconciled with the definition of "loans to small businesses" in 12 C.F.R. § 160.3 and 12 C.F.R. § 560.3.
2. Revise Schedule RC-E deposit reporting items to reflect the new FDIC insurance limit of $250,000.
3. The collection of data regarding NOW accounts should be removed.
4. Types of counterparties are not consistently defined across required reports, including the Call Report. These inconsistencies impose an unnecessary burden on institutions to interpret and maintain different definitions for different reports. To the extent possible, these definitions should be harmonized by removing unnecessary differences.
5. Memoranda items on Schedule RI should be reviewed to delete those line items that report such small amounts that they do not provide meaningful information.

Each year, ABA receives numerous questions on the Call Report and other reporting requirements from the banking industry. Sometimes these questions require us to contact the Agencies for clarification of the instructions, which can differ between each Agency. We believe the Agencies should establish a more coordinated and structured method to provide clarifications and other guidance on these reporting requirements. Such an approach would provide the Agencies helpful feedback on the reports that could be used to improve them further during the next cycle of amendments. For example, we are appreciative of the efforts of the Federal Financial Institutions Examination Council (FFIEC) Taskforce on Reporting, which diligently apprised the banking industry of its reconfiguration of the Call Report as it sought to adapt to the recently reformed capital regime. The Taskforce's communication of the reporting changes and conversations with industry regarding technical policy and reporting questions smoothed the process and could be a model going forward.

The historical and overarching purpose of the Call Report is to provide the Agencies the information necessary to assess bank condition, structure, and risk profile. Despite this governing principle, the Agencies recently proposed changes to the Call Report to collect compliance and non-financial information on consumer accounts that does not directly contribute to the assessment of a bank's safety and soundness. We continue to believe the Agencies should reconsider such collection in the Call Report and seek other methods to obtain the information.[18]

As noted in a joint letter signed by ABA last year,[19] the Agencies proposed the new reporting obligations to "understand fees consumers must pay to utilize the banking system," "the costs and potential risks financial services pose to consumers," and "facilitate monitoring of market entry and exit [that] would improve understanding of the consumer payments landscape generally." The redirection of the Call Report for new purposes would be inconsistent with its existing uses and legal structure, thereby significantly changing its character and value. We, therefore, urge the Agencies to revisit and reconsider this unwise expansion and in the future approach such changes only through the well-established amendment process that is predicated on incremental change following careful consensus-driven consideration by the FFIEC.

E. International Operations

The regulation of U.S. banks undertaking foreign banking activities is addressed by the FRB's Regulation K. Among other things, Regulation K defines the scope of activities permissible for U.S. banks operating in foreign markets, establishes reporting requirements, and sets lending limits.

In November 2001, the FRB amended Regulation K, finalizing a range of technical and clarifying changes needed to permit banks to stay internationally competitive and ensure that the purposes of the U.S. international bank regulatory scheme were being served in an increasingly global and interconnected economic environment. This 2001 review provided regulatory relief in a range of areas and was influenced by both EGRPRA and a statutory mandate found in Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI). Section 303 of CDRI required bank regulators to conduct a systematic review of their regulations and written policies to improve efficiency, reduce unnecessary costs, and eliminate inconsistencies and outmoded and duplicative requirements.[20] As required by the International Banking Act, the FRB is also required to review section 25A of the Federal Reserve Act (the Edge Act) every five years and

[18] We note that this addition to the Call Report was not made pursuant to the Dodd-Frank Act and would not be excluded from consideration in this EGRPRA review by the Agencies self-imposed scope limitation.
[19] See Joint Letter on Proposed Agency Information Collection Activities: Consolidated Reports of Condition and Income. (April 22, 2013) Available at: http://www.aba.com/Advocacy/commentletters/Documents/4-22-13CommentLettertoJointAgenciesreCallReport%28Final%29.pdf
[20] The report resulting from the "Riegle Community Development and Regulatory Improvement Act of 1994" is available at: https://www.ffiec.gov/Riegle.htm

make changes necessary to ensure that the purposes of the Edge Act are being served in light of prevailing economic conditions and banking practices.[21]

Developments in international and domestic banking since 2001 make Regulation K ripe for a comprehensive review. In such a review, the FRB should consider the following:

1. **International Investment Thresholds:** U.S. banking organizations are able to make investments abroad, subject to certain conditions. As required by 12 C.F.R. § 211.9(a), direct and indirect investments can be made without submitting prior notice if they are made in accordance with the general consent and limited general consent (both defined in statute) of the FRB. Currently, the definition of "general consent" in 12 C.F.R. § 211.9(b)(4) does not allow a portfolio investment to exceed $25 million. Under 12 C.F.R. § 211.9(c)(1), the FRB also grants "limited general consent" to investors that are not well capitalized and well managed, so long as it is the lesser of $25 million or certain thresholds tied to the investor's tier 1 capital. ABA believes that both the "general consent" and "limited general consent" thresholds should be updated to $50 million make this fixed statutory threshold more consistent with current market values.

2. **Dissolution under the Edge Act:** Currently, banks are faced with a long and costly process when winding down Edge Act corporations through 12 § C.F.R. 211.7, which only provides for voluntary liquidation. In practice, this means that banks slowly unravel these corporations by phasing out creditors and shifting liabilities away from the corporation until it can be legally dissolved. The Federal Reserve should also expressly permit other corporate transactions that effectively result in dissolution, such as the merger of Edge and agreement corporations, which would extinguish Edge and agreement corporation charters by operation of law. ABA believes this change would assist banks in their effort to dismantle structural redundancies.

3. **Investments and Activities Abroad:** Under 12 C.F.R. § 211.8(b), [Federal Reserve] member banks can make direct investments in certain entities, including foreign banks, domestic or foreign organizations formed to hold shares of a foreign bank, and subsidiaries established under § 211.4(a)(8).[22] The regulation does not expressly address whether it is permissible to hold the stock of an Edge Act or agreement corporation. ABA believes that the FRB's regulations should reflect established FRB practice that permits a member bank to hold the stock of an Edge Act or agreement corporation.

F. Regulation D

We appreciate that the Agencies are conducting a series of reviews on a variety of topics in follow up to the EGRPRA mandate. We will make appropriate comments on those subjects in future letters, in keeping with the spirit of this letter. For example, we intend to provide comment on regulatory relief that the Federal Reserve can take with respect to Regulation D at the appropriate time. In particular, we believe the Federal Reserve should take the opportunity to review Regulation

[21] 12 C.F.R. § 611a (2014).

[22] Section 211.4(a)(8) allows foreign branches of member banks (with FRB approval) to acquire all of the shares of a company that engages in activities (1) in which a member bank is permitted to engage, or (ii) which are incidental to the activities of the foreign branch.

D under the EGRPRA review to modernize its provisions and reflect current products and practices, including outdated restrictions on the treatment of savings deposits.

III. Conclusion

Over the next two years, ABA looks forward to working with the Agencies to find ways to reduce regulatory burden consistent with the shared goal of ensuring bank operations are conducted in a safe and sound manner while enhancing the ability of banks to serve their customers. Should you have any questions, please do not hesitate to contact the undersigned at skern@aba.com or (202) 663-5253.

Sincerely,

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